



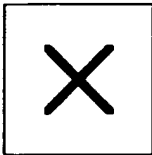
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/867,174
Filing Date: May 29, 2001
Appellant(s): SCHEER, ROBERT H.

MAILED
JAN 18 2006
GROUP 3600

Gary R. Jarosik
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 10/24/2005 appealing from the
Office action mailed 08/12/2005

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: The ground(s) for rejection are reproduced below from the Final Office Action, paper # 9, and are provided here for the convenience of both the Appellant and the Board of Patent Appeals:

Quote: "

Response to Arguments

2.1. In view of the current amendment to independent claim 1, rejection of claims 11-20 under 35 USC 101 is withdrawn.

2.2. Applicant's arguments filed on July 8, 2005 with respect to currently amended claims 11-20 have been considered but are moot in view of the new ground(s) of rejection necessitated due to amendments to the claims.

This is a Final Office Action.

Claim Rejections - 35 USC § 103

3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3.1. Claims 11-12, 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altendahl in view of Landvater.

Regarding claim 11, Altendahl teaches a computer readable media having instructions, executable by a computer, for use in selecting a fulfillment plan for moving an item within a supply chain (see at least Fig.1 and page col.3, lines 15-31, where, " shipping manager 10" computer program when

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executing under Windows 95 operating system and executed on a server"), the instructions performing steps comprising:

receiving an order for an item (see at least col.3, lines 32-46 which discloses that a seller's employee receiving an order for business systems-computers);

in response to receipt of the order for the item constructing a plurality of alternative fulfillment plans for moving the item from a sourcing point to one or more geographic locations within the supply chain (see at least col.4, line 17-col.5, line 35 which discloses that in response to receiving an order and entering the order into the shipping manager's system [10], the shipping manager 10 first generates alternative fulfillment plans for moving the item from its manufacturing/assembly point to the destination point by generating alternative choices of routes, such as Alpha, Bravo and Delta);

evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria and selecting for implementation one of the constructed plurality of alternative fulfillment plan that most closely meets the predetermined criteria, the selected one of the plurality of alternative fulfillment plan being used to position the item at a geographic location within the supply chain thereby making the item available for use in meeting the order (see at least col.5, line 50-col.6, line 25 which discloses that the alternative generated routing choices are subjected to evaluation on the basis of business rules [predetermined criteria] such as " if a shipment is going to Chicago, then use Alpha Freight Service or If expected delivery is Sunday, then use Bravo Freight Service....., see col.4 lines 17-61).

Altendahl discloses constructing a fulfillment plans for moving items from a sourcing point to a geographic location depending upon the destination address and identifier and selecting one of the plurality of fulfillment plans to position an item at a geographic location depending upon the destination address and identifier, as analyzed above and see col.2, lines 1-52 and col.4, line 17-col.5, line 35. Altendahl does not explicitly disclose that the item is to be moved to a plurality of geographic locations. However, in the same field of endeavor, that is a computer-implemented method and system for replenishing inventories at a plurality of retail stores in a retail store supply chain from a plurality of suppliers teaches the requirement for moving an item to a plurality of retail stores that is to a plurality of geographical locations corresponding to the plurality of retail stores in the retail store supply chain (see at least col.1, lines 10-20, col.6, lines 45-61, *"Referring to FIGS. 1 and 2, the present invention is a time-phased planning system 20 for use in a retail store supply chain 22 having one or more retail stores 23 (the first level in the supply chain), one or more suppliers 24 (the second level in the supply chain) and one or more manufacturers 25 (the third level in the supply chain). Retail store 23 can be a "bricks and mortar" store of any size or type, e.g., a small general store or a large "warehouse" store of a national chain. In addition, retail store 23 may be a so-called "clicks and bricks" store in which products are purchased on-line from a traditional store. Further, retail store 23 may be a pure e-commerce organization.....* ". Note: Landvater explicitly teaches organizing replenishment of inventories to a plurality of retail stores in a supply chain. In view of Landvater, it would have been obvious to one of an ordinary skilled in the art at the time of the applicant's invention to have modified Altendahl to construct a plurality of alternative fulfillment plans for moving items from a sourcing point to the plurality of locations of the ordering entity, that is the business system-computers and to position the item at one or more of those geographical locations because one of an ordinary skilled in the art would know that any business entity can have more than one locations distributed at different geographical locations, as exhibited for a retail supply chain in Landvater

Regarding claim 12, Altendahl teaches further using a customer specified level of service when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 17-61, wherein the a customer specifies the criteria such as " if a shipment is going to Chicago, then use Alpha Freight Service or If expected delivery is Sunday, then use Bravo Freight Service....., and " the business system is to be shipped so as to arrive no later than two weeks from the date of the order.....and other wise is to be shipped as inexpensively as possible.... ".

Regarding claim 14, Altendahl teaches further using a customer specified point of delivery when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 17-32, wherein the a

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customer specifies the criteria such as " if a shipment is going to Chicago, then use Alpha Freight Service..". The specified point of delivery is Chicago.).

Regarding claim 15, Altendahl teaches further comprising the step of using a customer specified delivery date when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 56-61, wherein the a customer specifies the criteria such as " the business system is to be shipped so as to arrive no later than two weeks from the date of the order.....").

Regarding claim 16, Altendahl teaches further comprising the step of using various combinations of sourcing points within the supply chain when constructing the plurality of alternative fulfillment plans (see at least col.7, line 50-col.8, line 32 , "the planning system 11 invokes a consolidator [module] 25.....In attempting to consolidate shipments, the consolidator module 25 searches the batch shipments for all shipments having matching required properties. Usually these will include the shipper, consignee.....". Note: Considering the shippers and consignees in determining consolidating the shipment corresponds to using various combinations of sourcing points.).

Regarding claim 17, Altendahl teaches further comprising the step of using customer specified consolidation requirements when constructing the plurality of alternative fulfillment plans (see at least col.7, line 50-col.8, line 32 , "the planning system 11 invokes a consolidator [module] 25.....").

Regarding claim 18, Altendahl teaches further comprising the step of using activity costs when constructing the plurality of alternative fulfillment plans (see at least col.4 lines 56-61, wherein the a customer specifies the criteria such as the business system is to be shipped so as to arrive no later than two weeks from the date of the order.....**and other wise is to be shipped as inexpensively as possible.....**". Note: Considering an inexpensive shipment as far as possible corresponds to using activity cost in constructing alternative fulfillment plans.).

Regarding claim 20, Altendahl teaches further comprising the step of using a customer specified price quote when evaluating the constructed plurality of alternative fulfillment plans against a predetermined criteria (see at least col.3, lines 32-54 which discloses that all the terms of order including charge terms, payment terms, etc. are considered while inputting the order terms into shipping manager 10 program and then generating alternative fulfillment plans for selecting the routing paths and the ultimately the optimal selection based upon a predetermined criteria, that is the order terms including charge terms, payment terms, etc. . Note: using the order terms including charge terms, payment terms, etc. satisfies the claimed limitation.).

Regarding claim 19, Altendahl does not disclose the step of using inventory age when constructing the plurality of alternative fulfillment plans. However, Landvater in the same field of a retailers stores supply chain, teaches the step of using inventory age when constructing the plurality of alternative fulfillment plans (see at least col.18, line 25-col.19, line 36 which discloses to check for the availability of excess inventory so that if it is there then there is no need for planned replenishment shipment for the company). In view of Landvater, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Altendahl to incorporate the feature of using inventory age when constructing the plurality of alternative fulfillment plans because, it will help the company who received the order for business systems to use the excess inventory to meet the demands of the order without having to plan for replenishment in future.).

3.2 Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altendahl in view of Landvater and further in view of Dietrich.

Regarding claim 13, Altendahl in view of Landvater discloses a computer

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readable medium having instructions to construct alternative fulfillment plans in response to an order and then evaluate and select a plan to meet the predetermined criteria, as analyzed above in claim 11. Altendahl in view of Landvater does not disclose the use of branch and bound technique to determine candidate sourcing points for the item when constructing the plurality of alternative fulfillment plans. However, Dietrich teaches the use of branch and bound technique in the same field of endeavor, that is computerized production planning, logistics, scheduling, distribution and resource allocation (see at least abstract). In view of Dietrich, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Altendahl in view of Landvater to incorporate the feature of using branch and bound technique to determine candidate sourcing points for the item when constructing the plurality of alternative fulfillment plans because, it is a proven technique to provide optimal resource allocation producing the maximum benefit (see the last two sentences of the abstract).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. "

Unquote:

(10) Response to Argument

10.1. The applicant argues, see Appeal Brief, page 4, lines 1-18 that " In rejecting the claim, it was acknowledged that Altendahl files to disclose, teach or suggest the claimed "constructing a plurality of alternative fulfillment plans for moving an item from a sourcing point to each of a plurality of geographic locations within a supply chain" and then further argues that for this reason Altendahl does not teach the other steps of evaluating and selecting . The examiner disagrees. In the Final Office action, see pages 3-5, the examiner acknowledged that Altendahl anticipates all the limitations of claim 11, that is constructing a plurality of alternative fulfillment plans for moving an

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item from a sourcing point to a geographical destination of a business company from whom a order has been received for computer systems, evaluating each of the constructed plurality of alternative fulfillment plans against a predetermined criteria and selecting for implementation one of the constructed plurality of alternative fulfillment plan being used in position the item at the business company's location thereby making the item available for use in meeting the order, ***except that plurality of geographical destinations are considered instead of one.***

Altendahl suggests constructing fulfillment plans for a batch of parcels instead of one parcel (see Altendahl col.1, lines 40-52), or constructing fulfillment plans for an order comprising several different resources, wherein each resource represents a different shipment (see col.4, lines 6-16) and each different resource could have a different geographic destination (see col.12, lines 31-39), that is selection of a carrier/fulfillment plan is based upon the type of the load and destination of the parcel. All these disclosures in Altendahl suggests that fulfillment plans are constructed for a plurality of parcels which could be destined for different addresses, that is a plurality of geographical locations. Altendahl, as acknowledged by the examiner in the Final office action, does not explicitly disclose considering a plurality of geographical locations for shipment of the same item as ordered but, as analyzed above, suggests considering a plurality of shipments of different parcels to different addresses. In order to modify Altendahl to include the feature of considering a plurality of geographic locations for shipment of an ordered item the examiner combined the teachings of Landvater wherein requirement of moving an item or items to replenish inventories at a plurality of retail

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stores within a supply chain is disclosed. It will be obvious to one of an ordinary skilled in the art that the teachings of Landvater are applicable to the Altendahl's example of a business company ordering computer systems on a seller because it would be obvious to one of an ordinary skilled in the art that a business company can have several installations/stores at different geographical locations requiring same items and supplies so that they are ordered simultaneously for all the branches to save cost of operation and get price advantage.

10.2. The applicant further argues, see Appeal Brief, page 4, line 19-page 5, line 13, that the examiner has used "hindsight reasoning", in combining the references of Altendahl and Landvater. The examiner respectfully disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, as analyzed above the examiner's obviousness conclusion is solely based upon the evidence relied upon the prior art of Altendahl, Landvater and the level of skill in the particular art that is businesses have more than one installations at a plurality of geographical locations requiring the same supplies and items as shown in Landvater. In Landvater a retail

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supply store chain organizes replenishment of inventories, which includes movement of one or more items from a source to its plurality of retail stores located on different geographic locations.

10.3. The applicant argues, see page 5, line 14, -page 6, line 20, that Altendahl fails to disclose the claimed elements of claim 11, including constructing fulfillment plans for moving an item from a sourcing point *to each of plural geographic locations within the supply chain*. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the examiner has combined the teachings of Altendahl and Landvater and the level of skill in the particular art to conclude the obviousness of the applicant's claimed invention including constructing fulfillment plans for moving an item from a sourcing point *to each of plural geographic locations within the supply chain*, as analyzed above and in the Final office action.

10.4. The applicant argues, see page 6, line 21, -page 7, line 5, that Landvater fails to disclose the claimed elements of claim 11, including constructing or selecting a plan to move the forecast amount of items at the forecast time to each of retail stores.. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are

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based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the examiner has combined the teachings of Altendahl and Landvater and the level of skill in the particular art to conclude the obviousness of the applicant's claimed invention including constructing fulfillment plans for moving an item from a sourcing point to each of plural geographic locations within the supply chain, as analyzed above and in the Final office action.

10.5. The applicant argues, see Appeal Brief, page 7, lines 6-17 that both the references Altendahl and Landvater combined does not teach the claimed limitations of claim 11. The examiner disagrees, as already analyzed in paragraph 10.1 above, that evidence relied upon by the examiner and the level of skill in the particular art would have suggested to one of an ordinary skill in the art the invention as set forth in claim 11.

10.6. The applicant argues, see Appeal brief, (see page 7, line 18-page 8, line 1) that Landvater does not disclose constructing a plurality of alternative plans for each of constructing a plurality of alternative fulfillment plans for each of plural geographic locations within a supply chain. The examiner respectfully disagrees for reasons given in paragraph 10.4 above. The applicant further argues, see Appeal brief, page 8, lines 1- 3 that the examiner has used hindsight knowledge impermissively derived from the

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disclosure of the subject application. The examiner respectfully disagrees for reasons given in paragraph 10.2 above.

The applicant further argues, see Appeal Brief, page 8, lines 3-9, that the motivation provided in the Final Office action for modifying Altendahl in view of Landvater, (see Final Office action on page s 4-5 “. In view of Landvater, it would have been obvious to one of an ordinary skilled in the art at the time of the applicant's invention to have modified Altendahl to construct a plurality of alternative fulfillment plans for moving items from a sourcing point to the plurality of locations of the ordering entity, that is the business system-computers and to position the item at one or more of those geographical locations because one of an ordinary skilled in the art would know that any business entity can have more than one locations distributed at different geographical locations, as exhibited for a retail supply chain in Landvater “), does not stand up to close scrutiny and that it has not been explained why a person of ordinary skill in the art would have found it obvious to reconstruct the system of Altendahl to include the claim elements missing from Altendahl-in the order claimed merely because multiple retail stores may require similar items. In response, the examiner would like to point out :

(a) the order/sequence in which the steps of a method are written is not a requirement unless the claim specifically recites so or the specification directly or implicitly requires such a narrow construction, [see “

Altiris Inc. v. Symantec Corp., 65 USPQ2d 1865 (CA FC 2003) (@headnote #1)
"Interactive Gift recites a two-part test for determining if the steps of a method claim that do not otherwise recite an order, must nonetheless be performed in the order in which they are written. Id. First, we look to the claim language to determine **if, as a matter of logic or grammar, they must be performed in the order written.** Id. at 1343, 59 USPQ2d at 1416. For example, in Loral Fairchild Corp. v. Sony Electronics Corp., 181 F.3d 1313, 1321, 50 USPQ2d 1865, 1870 (Fed. Cir. 1999), we held that the claim language itself indicated that the steps had to be performed in their written order because the second step required the alignment of a second structure with a first structure formed by the prior step. See also Mantech Envtl. Corp. v. Hudson Envtl. Servs., Inc., 152 F.3d 1368,1375-76, 47 USPQ2d 1732, 1739 (Fed. Cir. 1998) (holding that the steps of a method claim had to be performed in their written order because each subsequent step referenced something logically indicating the prior step had been

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performed). **If not, we next look to the rest of the specification to determine whether it "directly or implicitly requires such a narrow construction."** Interactive Gift, 256 F.3d at 1343, 59 USPQ2d at 1416. **If not, the sequence in which such steps are written is not a requirement."**],

and

(b) Altendahl suggests constructing fulfillment plans for a batch of parcels instead of one parcel (see Altendahl col.1, lines 40-52), or constructing fulfillment plans for an order comprising several different resources, wherein each resource represents a different shipment (see col.4, lines 6-16) and each different resource could have a different geographic destination (see col.12, lines 31-39), that is selection of a carrier/fulfillment plan is based upon the type of the load and destination of the parcel. All these disclosures in Altendahl suggests that fulfillment plans are constructed for a plurality of parcels which could be destined for different addresses, that is a plurality of geographical locations. Altendahl, as acknowledged by the examiner in the Final office action, does not explicitly disclose considering a plurality of geographical locations for shipment of the same item as ordered but, as analyzed above, suggests considering a plurality of shipments of different parcels to different addresses. In order to modify Altendahl to include the feature of considering a plurality of geographic locations for shipment of an ordered item the examiner combined the teachings of Landvater wherein requirement of moving an item or items to replenish inventories at a plurality of retail stores within a supply chain is disclosed. It will be obvious to one of an ordinary skilled in the art that the teachings of Landvater are applicable to the Altendahl's example of a business company ordering computer systems on a seller because it would be obvious to one of an ordinary skilled in the art that a business company can have several

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installations/stores at different geographical locations requiring same items and supplies so that they are ordered simultaneously for all the branches to save cost of operation and get price advantage.

10.7. The applicant argues, see Appeal Brief, page 8, line 9-page 9-line 5, that if the teachings of Landvater are considered in its entirety, including ***determining the amount of items to ship to each of plural predetermined locations , i.e., retail stores***, it will require a modified system in direct contrast to the methodology underlying the invention set forth in the claims, that is one in which ***the geographic location in which an item that is the subject of the order is to be positioned is not known until after the instructions evaluate each of the constructed alternative fulfillment plans for each of a plurality of geographic locations within a supply chain against a predetermined criteria***. In response to the applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., ***the geographic location in which an item that is the subject of the order is to be positioned is not known until after the instructions evaluate each of the constructed alternative fulfillment plans for each of a plurality of geographic locations within a supply chain against a predetermined criteria***.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Claim 11 nowhere recites that the

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geographic location in which an item is to be positioned ***is not known*** until after the evaluation step is carried out. In fact, it is implied that all the geographic locations are known while constructing alternative fulfillment plans for each of the plurality geographic locations and therefore the question of not knowing the geographic location does not exist. The geographic location at which the item is to be moved to was already considered while constructing the alternative fulfillment plans.

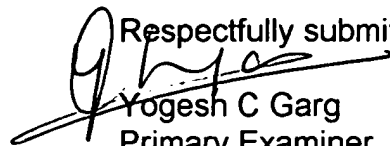
It is also important to note that the applicant acknowledges that, Landvater teaches “***determining the amount of items to ship to each of plural predetermined locations , i.e., retail stores,***”, the missing limitation from Altendahl.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

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 Respectfully submitted,
Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG

December 29, 2005.

Conferees

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 1-4-06

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